

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 99-0033/COA (8470-000114/COA)	
		Application Number 10/624,869-Conf. #7658	Filed July 22, 2003
		First Named Inventor Thodore G. Duclos et al.	
		Art Unit 3676	Examiner M. J. Kyle

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant /inventor.

/Ryan W. Massey/

Signature

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b)
is enclosed. (Form PTO/SB/96)

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Registration number if acting under 37 CFR 1.34. _____

November 9, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.



*Total of 1 forms are submitted.

Attachment to Pre-Appeal Brief Request for Review
dated November 9, 2006

Serial No. 10/624,869

Applicants note that claims 1, 10, and 17 include “a generally flat carrier having a generally planar top surface.” Applicants note that what the Examiner considers the carrier (11) in Creavey is not “generally flat” and does not have a “generally planar top surface,” as claimed. Applicants further note that Jackson fails to teach a generally flat carrier having a generally planar top surface. Applicants further note that in both Creavey and Jackson, the carrier and stopper members are integrally formed, as admitted by the Examiner. The Examiner uses the combination of Udagawa with Creavey and Jackson to allegedly teach independently formed stopper members. However, Udagawa merely discloses a single stopper F12 and also fails to disclose a flat carrier. Accordingly, it is noted that none of the references disclose a flat carrier having a generally planar top surface, as claimed.

In response to Applicant’s hindsight argument, the Examiner indicates that “[o]ne of ordinary skill, looking at the prior art reference of Udagawa would recognize that stoppers [may] be formed either way to arrive at the same result.” However, Applicants submit that in order to arrive at this result, one would also need to look at the claimed gasket. This is the essence of an impermissible hindsight reconstruction. There is nothing present in the references to motivate or suggest their combination or the modifications suggested by the Examiner. Therefore, the Examiner’s rejection appears to be nothing more than a hindsight reconstruction of Applicant’s claimed gasket resulting from picking and choosing individual elements from each of the references.

Specifically, Udagawa discloses an entirely metal gasket, including the seal member (E13, F13 in Figs. 6 and 7). Any portion of Udagawa that could be considered

Attachment to Pre-Appeal Brief Request for Review
dated November 9, 2006

Serial No. 10/624,869

the stopper member (E12, F12) is integrally formed with a “top surface” of a carrier portion of the gasket (F10). The same is true in both Creavey and Jackson. Each of claims 1, 10, and 17 requires a generally flat carrier member with a generally planar surface, stopper members independently formed from the carrier and located on the top surface, and an elastomeric seal member on the top surface.

Contrary to the claimed features, Udagawa discloses a carrier having a non-planar surface and a metal, not elastomeric, seal member. Further, Udagawa merely discloses two metal plates F10, F15 in Figure 7 placed on top of one another, not the claimed carrier having independently formed stopper members and an elastomeric seal member extending from a top surface thereof. In order to arrive at his gasket constructed from the combination of references, he must selectively pick and choose among the various elements. Specifically, he must ignore the integrally formed stopper members in Creavey and Jackson. He must then take the metal gasket (F10) of Udagawa having integrally formed carrier, sealing, and stopper portions and take only the stopper portion. As indicated above, it appears that the only way one skilled in the art could arrive at the gasket constructed by the Examiner is by first viewing the features of the claimed gasket. As such, Applicants again submit that this is an improper hindsight reconstruction and, therefore, claims 1, 10, and 17 are in condition for allowance.

Additionally, Applicants note that claim 1 recites the “first and second stopper members forming a cavity therebetween, with each having a height above said top surface” and “an elastomeric seal member located in said cavity ... having an apex

Attachment to Pre-Appeal Brief Request for Review
dated November 9, 2006

Serial No. 10/624,869

which extends from said top surface and is greater than said height of said first and second stopper members." The apex portion (30) in Creavey cannot be seen as extending from the top surface, as it extends from portion (13) which extends above stopper member (16), as seen in Figure 3. Applicants note that Figures 4 and 5 merely show the gasket of Figure 3 under fluid pressure and therefore cannot be seen as teaching the limitations of claim 1 either. As such, Applicants submit that these features place claim 1 in condition for allowance in addition to those set forth above.

Claims 2-9, 11, 13, 15, 18-25 and 40 depend from claims 1, 10, and 17, and should be in condition for allowance for the reasons set forth above. Therefore, reconsideration and withdrawal of the rejection of claims 1-11, 13, 15, 17-25 and 40 are respectfully requested.